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Attorney for *Defendant Robert A. Bisom*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN MARIANA ISLANDS

ROBERT D. BRADSHAW,

Plaintiff,

vs.

COMMONWEALTH OF THE NORTHERN  
 MARIANA ISLANDS, NICOLE C. FORELLI,  
 WILLIAM C. BUSH, D. DOUGLAS COTTON,  
 L. DAVID SOSEBEE, ANDREW CLAYTON,  
 UNKNOWN AND UNNAMED PERSONS IN  
 THE CNMI OFFICE OF THE ATTORNEY  
 GENERAL, ALEXANDRO C. CASTRO, JOHN  
 A. MANGLONA, TIMOTHY H. BELLAS,  
 PAMELA BROWN, ROBERT BISOM and JAY  
 H. SORENSEN,

Defendants.

CASE NO. CV 05-00027

REPLY OF ROBERT A. BISOM TO  
 PLAINTIFF'S OPPOSITION TO  
 MOTION TO QUASH SERVICE

Date: Thursday, September 7, 2006  
 Time: 8:30 a.m.  
 Judge: Hon. Alex R. Munson

COMES NOW Defendant Robert A. Bisom with the following Reply to Plaintiff's Opposition to Robert A. Bisom's Motion to Quash Service in the above-referenced matter. For the reasons stated in Mr. Bisom's Motion, the Memorandum submitted in support thereof, and in this reply, the Court should quash Plaintiff's purported service on Mr. Bisom by publication and require Mr. Bisom to comply, specifically, with the Fed. R. Civ. P. 4(f)(1). Plaintiff has not made, and cannot make, the requisite showing that he is not able to serve Mr. Bisom other than by publication pursuant to the last resort, substituted service provisions of the Commonwealth long-arm jurisdiction statute, 7 C.M.C. § 1101 *et seq.*

A. Fed. R. Civ. P. 4(f), and the cases interpreting it, requires that a party exercise, and demonstrate to the Court that it exercised, diligence in its attempts to ascertain the whereabouts of a foreign defendant prior to resorting to various forms of substituted service,

1 particularly service by publication and other forms of service that controvert the purpose and  
2 intent of the Hague Service Convention. *See, e.g., Trask v. Service Merchandise Co., Inc.*, 135  
3 F.R.D. 17, 22 (D. Mass. 1991) (“[T]he absence of at least a good faith attempt to comply with  
4 the Hague Convention prohibits this court from applying the liberal standards of Fed. R. Civ.  
5 P. 4 in analyzing the propriety of service. . . .”) *Rio Properties, Inc. v. Rio International*  
6 *Interlink*, 284 F.3d 1007, 1016-17 (9<sup>th</sup> Cir. 2002) (“Even if facially permitted by Rule 4(f)(3),  
7 a method of service of process must also comport with constitutional notions of due process.”);  
8 *Popular Enterprises, LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 561 (E.D. Tenn.  
9 2004) (finding it notable that, in *Rio Properties*, it was “only after all these efforts failed that  
10 the plaintiff asked the district court to allow e-mail service”).

11 Here, no such diligence was shown; no such diligence exists. It is Plaintiff’s burden to  
12 show that service on Mr. Bisom was proper in this case. *See, e.g., Brockmeyer v. May*, 383 F.3d  
13 798, 801 (9<sup>th</sup> Cir. 2003) (“Once service is challenged, plaintiffs bear the burden of establishing  
14 that service was valid under Rule 4.” citing 4A CHARLES A. WRIGHT & ARTHUR R. MILLER,  
15 FEDERAL PRACTICE AND PROCEDURE § 1083 (3d ed. 2002 & Supp. 2003) and *Butcher's Union*  
16 *Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9<sup>th</sup> Cir. 1986)).

17 The only facts in evidence of any effort to serve Plaintiff by traditional means, including  
18 any effort by Plaintiff to determine Mr. Bisom’s address for purposes of Hague Convention  
19 Service is: in March 2005, in connection with the since dismissed case Mr. Bradshaw filed in  
20 the United States District Court for the District of Idaho, Bradshaw obtained a report from  
21 “www.locateplus.com” that showed prior addresses of two persons who apparently have the  
22 name “Robert A. Bisom,” but no address information for either of the two Robert A. Bisom’s  
23 therein for any time past November 2000. *See* Exhibit “A,” ¶ 1 of Bradshaw’s Affidavit of  
24 Plaintiff’s Efforts to Locate Robert A. Bisom filed in this matter on December 9, 2005.  
25 Plaintiff admits that his efforts at the time were to locate Mr. Bisom (the Robert A. Bisom of  
26 this case) for the District of Idaho action.

27 There is no evidence of any further efforts to serve Mr. Bisom personally or further  
28

1 efforts of Plaintiff to determine the whereabouts of Mr. Bisom.

2 The only other efforts by Plaintiff to serve Mr. Bisom (other than by publication in this  
3 case) were the following: (1) efforts to determine whether Jay Sorensen was still Mr. Bisom's  
4 attorney in other pending matters and (2) efforts to serve Jay Sorensen (via his wife Cynthia  
5 Sorensen) in lieu of serving Mr. Bisom. *Id.* See also Plaintiff's Affidavit in Support of Motion  
6 to Serve Robert A. Bisom by Publication and for a Change to the Period Allowed for Service  
7 from 120 Days to 240 Days filed in this matter on December 9, 2005 (no indication that  
8 Bradshaw made any effort to locate Bisom, only that he tried but failed to serve Bisom via  
9 Sorensen).

10 Notably, after the Court quashed service for the first time in this matter, Plaintiff  
11 admitted his singular prior effort to serve Bisom in this case: "Because Mr. Sorensen now  
12 claims to lack authority to accept process for Mr. BISOM, this motion is being filed to request  
13 that the court . . . allow BRADSHAW to serve Mr. BISOM by publication." *Id.* at ¶ 8  
14 (emphasis in original).<sup>1</sup>

15 Also, Mr. Bradshaw has never asked any of Mr. Bisom's attorneys, including the  
16 undersigned, about Mr. Bisom's whereabouts. As stated earlier, Plaintiff carries the burden  
17 of proper service, including proper diligence prior to requesting substituted service or a  
18 particular form of substituted service requiring a separate level of diligence. This remains  
19 Plaintiff's burden notwithstanding Plaintiff's new position in his Opposition that no one ever  
20 came forward and provided him with Mr. Bisom's address. See Plaintiff's Memorandum  
21 Opposing Motion of Robert A. Bisom to Quash Service at ¶¶ 9, 11. The problem of service  
22 here does not rest with Mr. Bisom's attorney's as Plaintiff suggests; that problem rests squarely  
23 with Plaintiff.  
24

25 In short, the only effort Plaintiff has made to determine the whereabouts of Mr. Bisom

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27 <sup>1</sup> Even in his Opposition to this Motion to Quash, Plaintiff continues to assert  
28 that service upon Mr. Sorensen should be enough despite this Court's prior order quashing  
service on Mr. Bisom through Mr. Sorensen. See Opposition at ¶8.

1 was a March 2005 internet search report that indicated that two Robert A. Bisom's had lived  
2 in various places in the United States for periods through November 2000. The only efforts  
3 to serve Mr. Bisom prior to the Court granting Plaintiff's request for substituted service by  
4 publication were Mr. Bisom's misguided efforts to serve Mr. Bisom through Mr. Sorensen.

5 Because Plaintiff has failed to exercise the diligence required to avoid his Rule 4(f)(1)  
6 service obligations, Plaintiff should be required to start over and properly serve Mr. Bisom  
7 through the Hague Service Convention.

8 B. Further, Title 7, Section 1104(b) of the Commonwealth Code, the substituted  
9 service provision under which the Court allowed the present service on Mr. Bisom by  
10 publication, requires, among other things, that a litigant show that with reasonable diligence  
11 the defendant cannot be served personally or served by mail prior to obtaining leave to serve  
12 by publication.

13 As stated above, there is no evidence to suggest that Plaintiff did anything other than  
14 (1) to determine that some "Robert A. Bisoms" had resided in various places in the United  
15 States through November 2000 and (2) to attempt to serve the Mr. Bisom of this case through  
16 Jay Sorensen, Mr. Bisom's attorney in other matters. Plaintiff falls far short of his burden  
17 under 7 C.M.C. § 1104(b) and, accordingly, service by publication on Mr. Bisom should be  
18 disallowed.

19  
20 Respectfully submitted this 31<sup>st</sup> day of August, 2006.

21  
22 /s/ Mark B. Hanson

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Appearing Specially for Robert A. Bisom

CERTIFICATE OF SERVICE

I, Rowena de Vera, hereby certify that this day a copy of the foregoing was deposited in the United States Post Office, first class mail, postage prepaid, addressed to the following:

Robert D. Bradshaw, Plaintiff *pro se*  
P.O. Box 473  
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DATED: August 31, 2006

/s/ Rowena de Vera

ROWENA DE VERA